

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

WILLIAM C. FLOYD JR.,

Petitioner,

vs.

SCOTT FRAKES, Director of the
Nebraska Department of Correctional
Services; and BRAD HANSEN, Warden
Tecumseh State Correctional Institution;

Respondents.

8:13CV195

**MEMORANDUM
AND ORDER**

This matter is before the court on Petitioner's Motion to Amend his Habeas Corpus Petition to add a claim of actual innocence. ([Filing No. 131](#)). The court had previously granted Petitioner leave to file an amended habeas petition in the court's April 7, 2017, Memorandum and Order, that "**clearly presents all of his claims for relief.**" ([Filing No. 122.](#)) Petitioner filed his 58-page Amended Petition for Writ of Habeas Corpus ([Filing No. 127](#)), and the court has condensed and summarized Petitioner's claims in the court's August 7, 2017, Memorandum and Order ([Filing No. 128](#)), as amended by the court's August 23, 2017, Memorandum and Order ([Filing No. 130](#)). In the present motion to amend, Petitioner relies on several of the allegations contained in his Amended Petition for Writ of Habeas Corpus and states that he "has presented a claim of Actual Innocence as a gateway through any type of procedural default that the State may deem" and that justice requires he be permitted to amend. ([Filing No. 131 at CM/ECF p. 15.](#))

The court notes that Petitioner indirectly referred to a claim of actual innocence in his Amended Petition for Writ of Habeas Corpus in the context of his claim of ineffective assistance of trial counsel, Claim One. ([Filing No. 127 at](#)

[CM/ECF p. 33](#).) The court will, thus, permit Petitioner to amend his habeas corpus petition and will add Petitioner's claim of actual innocence as Claim Seven. Petitioner is admonished, however, that no further amendments will be entertained as Petitioner was previously ordered to include all claims for relief in a single amended habeas petition pursuant to the court's April 7, 2017, Memorandum and Order.

IT IS THEREFORE ORDERED that: Petitioner's claims are amended to include Claim Seven as set forth in this Memorandum and Order. In addition to Petitioner's claims as set forth in [Filing No. 128](#) and [Filing No. 130](#), Respondents shall respond to the actual innocence claim in Claim Seven and address whether such claim defeats any procedural default as Petitioner alleges.

Dated this 16th day of October, 2017.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge